No. 2507

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

WOO WAI, WONG CHUNG and WONG YEE,
Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Brief of Plaintiffs in Error.

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TABLE OF CONTENTS.

TABLE OF CASES.

P.

S.

U.

W.

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BRIEF OF PLAINTIFFS IN ERROR.

THE STORY.

At some date, not given in the record of this case, but certainly prior to October, 1908, a scheme was devised by Government officials, so high in the places of power and so distinguished in their respective exalted positions that unless these facts had been testified to by Government witnesses, the story which follows would not be believed by any man with the ordinary sense of the decencies of life.

It appears from the evidence offered by the Government that Professor Jenks, United States Commissioner of Immigration, prior to October, 1908, employed a

detective named Golden M. Roy, in the presence of Professor Sanford, a Government official and also a professor of physics at Stanford University, as a detective to act in conjunction with Sanford's investigation, which will appear later in this narrative. Under such employment, the detective Roy procured himself to be introduced to Woo Wai, a Chinaman who for more than thirty years had been a law-abiding resident and prominent merchant in the City of San Francisco, and under such introduction invited Woo Wai to go with him at his expense to San Diego, representing to Woo Wai that he, Woo Wai, had been living in San Francisco for more than thirty years and had not been out anywhere, and that he had better come down and see Los Angeles and San Diego, and that there would be a way to make money (Tr., pp. 152-3). Roy finally succeeded in getting Woo Wai to leave San Francisco and go with him to San Diego; he, Roy, paying *with Government money,* all of the expenses of the trip. Arriving at San Diego, Roy had one Conklin, a Government official, promptly on hand to meet Woo Wai, and introduced him to the latter as his friend. The same evening Roy took Woo Wai to the *United States Custom House,* where was waiting for him, one Weddle, another Government official, and he again introduced Woo Wai to this latter official as being also his friend.

There had been devised a nefarious scheme by Government officials through which the poison of crime

was attempted to be injected into the mind of Woo Wai. The plan suggested was that Woo Wai should bring Chinese from Mexico into the United States, under the ægis of the protection of Government officials.

Woo Wai, even though a Chinaman, demurred, delayed and refused to join in this damnable scheme, and it was not until nearly eighteen months later that through the insistence, the machinations and the outrageous traps of Government officials, including the authority of the Secretary of Commerce and Labor, given in a telegram to Inspector Weddle, that the integrity of Woo Wai was finally broken down, and he was induced to join in a conspiracy to violate the laws of the United States, which resulted in his indictment and conviction.

Among the government officials, actual parties to the scheme which the record in this case discloses, are:

PROFESSOR JENKS, United States Immigration Commissioner, a distinguished scholar and Professor at Cornell University;

BENJAMIN J. CABLE, Assistant Secretary of Commerce and Labor;

DANIEL J. KEEFE, Commissioner General of Immigration;

W. R. WHEELER, former Assistant Secretary of Commerce and Labor, member of the Immigration Commission;

PROFESSOR SANFORD, member of the faculty of Stan-

ford University and Confidential Agent of the Immigration Commission;

H. H. WEDDLE, Inspector in charge of the Immigration Service of the United States in the District of San Diego; and

RALPH L. CONKLIN, Chinese Inspector in the Immigration Bureau.

The only justification for the job put up on Woo Wai is to be found in the record as being the desire of these high government officials to "get something" on Woo Wai, who was supposed to have information desired by the Government as to matters in San Francisco, and by so "getting something" on him force from him the disclosure of what he was supposed to know.

A careful reading of the Government's testimony on this point will suggest to this Honorable Court that Torquemada was a tyro in extracting from his victims information supposed to be in their possession, in comparison with the acts and infamies perpetrated upon this poor but very prominent Chinaman, which were unblushingly confessed to be for the purpose of securing from him "certain information . . . and to get a hold on him (Woo Wai) to get that information" (Tr., p. 77). "We were doing that for the purpose of getting a hold on Woo Wai, to find out something that he knew" (Tr., p. 79).

Parenthetically it may be remarked here that the record shows the information sought from Woo Wai had nothing whatever to do with the smuggling of

Chinese into the United States by way of San Diego, but referred to Chinese prostitution in San Francisco. This is to be deduced from the statement of the witness Weddle, as found reported on page 78 of the Transcript, in which he states:

> "Q. And Professor Sanford wanted to get information in relation to Dr. Gardner and Mr. North of the Immigration Commission in San Francisco?
> "A. He didn't tell me that.
> "Q. The Immigration officers there?
> "A. People connected with the Immigration offices. He didn't say who. I believe he wanted a hold on Woo Wai to make Woo Wai tell him those things."

It is not necessary to the sequence of this story but is illuminating to this Court as to the means used by the Government conspirators in this case to refer to the numberless brutalities of some of the Government perpetrators by which was finally secured the confidence of Woo Wai so as to break down his sense of right acquired during a residence of over thirty years in San Francisco. We refer, *inter alia,* to the visit of Inspector Conklin to Woo Wai's home, where about Christmas time, this Government official brought presents to the young children of Woo Wai, caressed them, and by a simulated tenderness more than anything else in this case, blinded Woo Wai to their nefarious purpose.

It would be an imposition upon your Honors to

more than merely outline, as has been done above, the plot that resulted in creating a criminal out of an honest, honorable Chinaman, and, as a necessary incident, pulling down with him the other defendants in this case, who plainly relied upon Woo Wai's leadership.

And do not forget, your Honors, that this man was made a criminal by Government officers of high rank and standing after he had withstood for a long period of months their efforts to seduce him.

STATEMENT OF THE FACTS.

In October, 1908, a detective named Golden M. Roy (neither whose testimony nor career, unfortunately for the defendants, is to be found in the record, though within the power of the great United States Government to produce and tender to the jury), procured himself to be introduced to Woo Wai, one of the most prominent merchants in San Francisco, and who had lived in that city for more than thirty years. Roy for this purpose called upon Tom King Chong, for many years theretofore the editor of a Chinese Republican newspaper, who had been the friend of Woo Wai for a period of more than twenty years, and asked him if he, Tom King Chong, would get Woo Wai to come and meet him, Roy (Tr., p. 135). It appears from the evidence of the Government witnesses that Roy was employed by Government officials for the purposes herein stated. Following the introduction the testimony shows that Roy succeeded in persuading

Woo Wai to go with him to San Diego in October, 1908.

Arriving at San Diego, Roy and Woo Wai were met by United States Inspector Conklin at a hotel selected by Roy, where Roy introduced Conklin to Woo Wai as his friend. Upon such introduction, Conklin said to Woo Wai, pointing to Roy: "This man is my friend, and then he is the man that secured my position which I am now in" (Tr., p. 140).

The three then proceeded to the United States Custom House where Roy said he would introduce Woo Wai to the head man of the office. "And after this, I will bring you to see the head man of the office" (Tr., p. 141).

Arriving there Roy introduced Woo Wai to Weddle, who was Inspector in Charge, saying: "This is my friend."

Weddle testified: "I was not a friend of his; never saw him before, and didn't know him. I did not contradict him" (Tr., p. 78).

There for the first time was developed to Woo Wai the purpose of Roy in taking him to San Diego.

The evidence shows that Woo Wai did not rise to the bait, as had been hoped. He testified: "I didn't "assent to it. . . . While they were talking about "this, I said: 'Well, it is very—that is very impossi- "'ble, because I read the newspaper about the arrest "'of Chinamen for deportation in and about Los An- "'geles and in this neighborhood; it is very hard to

" 'do it' " (Tr.., p. 140). "Then all of this was talked " over by themselves. Of course, I listened to them, " and then I said, 'Well, it is not a business for me " 'to do, because I have so much business up in San " 'Francisco' " (Tr., p. 142).

These arch conspirators plainly saw their victim slipping from their slimy fingers, and in the endeavor to reassure Woo Wai and overcome his plainly expressed refusal, Roy said: "Oh, do—don't so much " afraid, not to afraid, because he is a Government offi- " cer; he will attend to it" (Tr., p. 141). And they said (of course meaning Weddle and Conklin): "Oh, " well if we make no arrest, who can make arrest? " And then we don't want to go to jail, you don't want " to go to jail; and if you go to jail, we will go to jail" (Tr., p. 143).

And so they reasoned and labored with him, and deliberately laid before him a plan complete in all of its details for carrying out the plot which they had devised "to get a hold" on him, and as heretofore shown.

Presumably hostile inspectors were to be switched from the route over which they suggested the proposed contraband Chinese should travel. A Mexican guide should be put in charge of them, and all would have a sign, then agreed upon, which would identify them and distinguish them from other contraband, so as to permit them to pass safely into the United States (Tr., pp. 141-2). These contraband were to walk on the

railroad track as the imprint of their feet on the sandy road would permit their being traced (Tr., p. 145).

Woo Wai persisted in his refusal, notwithstanding all of the blandishments of the detectives and the Government inspectors, and returned to San Francisco (Tr., p. 145).

Subsequently, however, the Government inspectors unfolded further details. Maps were produced and the route to be traveled indicated thereon, and information concerning different towns and railroad connections was given by the inspectors (Tr., pp. 125, 148, 168).

The letter of Professor Sanford plainly indicates the truth of Woo Wai's statement that he had declined to go into the scheme. Note the language of his letter to Conklin, Government's Exhibit 27, found on page 67 of the Transcript, under date December 2, 1908:

> "Dear Conklin: I have seen our friend since his return, and I think we will make matters all right yet. If some one else comes down there, tell Weddle to let them through anyway. I suppose he has received the telegram from Sec. Strauss concerning Woo Wai. The Secretary wired me that he would instruct him to let him pass. I will stand the responsibility of your letting another man through if necessary. Use him yourself for all he is worth . . . ."

What else could be meant by the learned professor of a great University when he says: "I think we will

make matters all right yet," than that he still hoped to instigate and induce Woo Wai to become a criminal. This letter, produced by the Government, written by a Government official, as well as the testimony of Weddle on page 81 of transcript, is our justification for connecting the name of a Cabinet Minister with the plot referred to by us in what we have designated as "THE STORY."

These Government officials continued to hound Woo Wai. Prior to July or August, of 1909, Roy used his best endeavors to get Woo Wai to go down again, and take with him Wong Yee or Wong Chung, for the purpose of smuggling Chinese (Tr., p. 147). Woo Wai further testifies: "After July or August, "1909, I didn't see Roy any more, I got letters from "this man, Mr. Conklin several times—wanted me to "go down. I think it was the last part of February "or March, 1910." These letters, however, were burned by Woo Wai under instructions of Conklin and Weddle that "the letters must be burned; they always burn mine, and I would burn theirs" (Tr., p. 147).

It was March 31, 1910, seventeen months after the first meeting in the San Diego Custom House, before anybody had succeeded in stirring up Woo Wai to the criminal activities long attempted by Government officials, at which time he wrote the letter which is found on page 65 of the Transcript and is Government's Exhibit No. 5. In that connection Woo Wai testified: "This letter dated March 31, 1910, begining 'Mr.

"Conklin My dear Friend,' was written by me after "I received the letter from Mr. Conklin in February "or March, 1910" (Tr., p. 148). But even then, and for several months thereafter, Woo Wai's delays had been unsatisfactory to the Government officials. Read United States Inspector Conklin's letter to Woo Wai dated January 2, 1911, commencing, "What's the matter you?"

U. S. Exhibit I, Tr., p. 87.

It must be apparent to your Honors from the above that every artifice and deception that human wit could devise were adroitly employed by the Government officials in this case to secure the confidence of the defendants, to overcome their opposition, and to induce them to commit crime.

Upon the stand these Government inspectors, Weddle and Conklin, were compelled to admit their duplicity:

Weddle testified:

> "Q. You disliked, did you not, to tell the falsehoods and to make him believe you were standing in with him when you were not?
> "A. Yes sir, I didn't like it" (Tr., p. 91).

Conklin testified:

> "Q. And every word that you told him was absolutely and unqualifiedly false, was it not?
> "A. Yes sir.
> "Q. What did you do that for?
> "A. I wanted to get evidence. I knew if I told

him that I wanted to get evidence, I wouldn't get it.

"Q. Were you willing to tell a falsehood to get evidence, even against a Chinaman?

"A. I did" (Tr., p. 130).

Also:

"Q. What were you willing to do to procure it (evidence)?

"A. I was willing to do most anything I could in order to gain the evidence necessary, without committing any crime" (Tr., p. 131).

Probably no useful purpose can be subserved by further reviewing in detail the evidence showing the entrapment of these defendants by the cabal of Government officials heretofore referred to. This can more satisfactorily be done, we take it, in the oral argument, with the implicit confidence which we have that your Honors will carefully read all of the testimony in this very important case.

And notwithstanding the rule of this court requiring a concise abstract or statement of the case, we deem it unnecessary to go more fully into the items of evidence than we have done above for the reason that our defense is that Woo Wai and his co-defendants were entrapped, instigated and induced to commit the crime, of which they were convicted, by Government officials, and this is disclosed by evidence amounting to demonstration.

SPECIFICATIONS OF ERRORS.

The Honorable the trial Judge, was of course fully advised of the defense relied upon at the trial, and the following instructions based upon that defense were requested of him by the defendants:

"Under proper circumstances a Government officer may, and it is frequently his duty to, engage in the detection of crime, but no one may or should procure the commission of crime for the purpose of arresting anyone. No one should lend aid or encouragement to the commission of crime, and no Court should, even to aid in detecting a supposed offender, lend its countenance to violation of positive law or to contrivances for inducing a person to commit a crime; therefore, if you find from the evidence that the plan to entrap the defendants into the commission of the overt act charged in the indictment was devised, instigated or suggested to the defendants, or any of them, by Government officers, or that the defendants, or any of them, were induced or solicited by Government officers to commit the overt act charged in the indictment, your verdict should be not guilty."

"If you find from the evidence presented to you in this case that officers of the United States Government, or an agent, or agents of or persons acting under the employment of such Government officers, advised, instigated, suggested, induced or procured the defendants to conspire and confederate together for the purpose of violating the Chinese exclusion laws of the United States, you should find the defendants not guilty."

"If you find from the evidence that the defendants brought, or caused to be brought into the

United States the Chinese persons named in the indictment, in violation of the Chinese exclusion laws of the United States, and in pursuance of the conspiracy alleged in the indictment, if you find that such a conspiracy was entered into or existed, yet if you believe from the evidence that the defendants brought, or caused to be brought into the United States the Chinese persons named in said indictment by reason of, or because of the instigation, suggestion, plan, inducement or procurement of officers or employees of the United States Government, your verdict should be not guilty" (Tr., pp. 188-9; 194-5).

The above instructions were refused; upon which refusal error has been duly assigned. They contain the law of entrapment as a defense and were taken from approved cases cited by his Honor in the court below, and will be found collated, with others, in the Points and Authorities which follow.

Error is also assigned in the giving by the Court of the following instructions:

"The theory of the defense interposed by these defendants as indicated by their evidence and the declaration of their counsel in argument, is, that if a conspiracy such as alleged has been shown, to which they were parties, such conspiracy was inspired and brought about through the inducement and instigation of the Government agents, and would not have been entered upon by defendants but for such instigation, nor attempted to be carried out but for the aid given by such agents—in other words, that the Government agents laid a trap for defendants and procured them to commit a crime

for the very purpose of prosecuting and convicting them thereof.

"But I am constrained to charge you, gentlemen of the jury, that, under the law, this theory, even if you find it sustained by the evidence, cannot be availed of by the defendants in this case as the basis of a valid defense. In other words, were you to find the facts to be fully as testified to by the defendants who took this stand, these facts would constitute no legal or valid defense in law to the charge embraced in this indictment.

"In the first place, none of the Government agents or officers, whose conduct is involved in this case, had the right or power to authorize the commission of the offense charged, which is an offense against the United States, and their consent to its commission, if given, or their participation therein, if you find they did so participate, is no protection whatever, under the law, to the defendants or any of them, against conviction therefor, should you find that they committed the acts charged in the indictment.

"Neither did said officers have the power or authority to protect defendants or any other person, if guilty of violations of the law, from arrest therefor, and a promise to that end if given is of no avail for defendants' protection against the consequences of their acts as you may find them. In other words, persons engaged in a criminal conspiracy such as here charged may be held guilty of the crime even though they were acting in the belief that Government officers or agents were cooperating with them, and notwithstanding the parties so engaged were depending upon such officers to protect them from arrest and to aid in carrying out the object of the conspiracy.

"Defendants were charged with a knowledge of these things, under the law, and, whether or not they knew them in fact, cannot be heard to invoke

their ignorance as a protection against their criminal act, if you find such was committed by them.

"If, therefore, you find from the evidence beyond a reasonable doubt that defendants committed the acts charged in the indictment, it will be your duty to find them guilty, notwithstanding the participations in such acts of the officers of the Government, if you find there was such participation" (Tr., pp. 192-3-4).

Manifestly, if this Court does not mean to recognize the great question of public policy presented by this appeal, to wit: that officials may not procure, induce, instigate crime, the judgment in this case must be affirmed. But we cannot believe that with the undisputed evidence furnished by the Government itself of the entrapment of these defendants through such exalted sources that this verdict, based solely upon the instructions on the subject given by the trial Court, will be allowed to stand. The jury was not permitted to consider the question whether or not the defendants were made criminals by the acts of Government officials and therefore should be acquitted.

We venture the assertion that had the jury in this case been permitted to render an untramelled verdict the defendants would have been acquitted from the box. But they were told in insidious but legal language that they would violate their oaths if they did not render a verdict based upon the law as given by the Court, and the Court told them that the defendants were guilty.

"According to the statements made by the witness Smith, he not only suggested the commission of this crime, but he (Smith) also stated that he desired to commit the same offense and would pay his part of the expense necessary for the commission of the prohibited act. Such conduct on the part of a man who is employed by the Government for the purpose of taking such steps as are necessary to prevent the commission of the offense and which would tend to the elevation and improvement of the defendant, as a would-be criminal, rather than further his debasement, should be rebuked rather than encouraged by the courts . . . When an employee of the Government, as in this case, and according to his own testimony, encourages or induces persons to commit a crime in order to prosecute them, such conduct is most reprehensible."

United States v. *Phelps,* 16 Philippine Reports, at page 443.

"Decoys are permissible to entrap criminals, but not to create them; to present opportunity to those having intent to or willing to commit crime, but not to ensnare the law-abiding in unconscious offending. Where a statute, as here, makes an act a crime regardless of the actor's intent or knowledge, ignorance of fact is no excuse if the act be done voluntarily; but when done upon solicitation by the Government's instrument to that end ignorance of fact stamps the act as involuntary, and excuses, or at least estops the Government from a conviction. In the former case the actor is bound to know the facts, and acts at his peril. In the latter case he is relieved of the obligation by the Government's invitation, which is of the nature of

fraudulent concealment and deceit, and, if not consent, yet doth work an estoppel. Though the seller has violated the statute, he was the passive instrument of the Government, and his is a blameless wrong for which he cannot be justly convicted."

United States v. *Healy,* 202 Fed., 350.

"It must be conceded that contrivances to induce crime (the contriver confederating for the purpose with the criminal), are most rigidly scrutinized by the courts, even when the contrivances are lawful in themselves. But when the contrivances are of an unlawful character, should courts not be even more strict?"

"No court should, even to aid in detecting a supposed offender, lend its countenance to a violation of positive law, or to contrivances for inducing a person to commit a crime."

U. S. v. *Whittier,* 28 Fed. Cases, p. 594, Case No. 16,688.

"The government agent was therefore not engaged in detecting crime, but in procuring its commission."

"These facts tend to show that the accused was reluctant to act in the particular transaction, and the fact adds to the reprehensible character of the conduct of the prosecuting witness. There is no case which goes so far as to allow a conviction upon such a state of facts."

United States v. *Adams,* 59 Fed., at page 677.

"There is something repugnant in the idea of the government, by art and contrivance, entrapping one of its citizens into the commission of

crime in order to subject him to criminal prosecution; and such prosecutions have been felt by the courts to be more or less objectionable in morals and in policy. . . . But to go further, and after the citizen has been seduced by the government into robbing the mail, to prosecute him criminally for the act, is more or less offensive to public sentiment."

U. S. v. *Jones,* 80 Fed., 513, 514.

In the case of *Grimm* v. *United States,* 156 U. S. Sup. Ct., 605, 39 L. Ed., 550, the United States Supreme Court, while justifying the use of decoy letters, expressly says:

"It does not appear that it was the purpose of the postoffice inspector to induce or solicit the commission of a crime, but it was to ascertain whether the defendant was engaged in an unlawful business.

"From the authorities and upon principle we are of opinion that the conduct of the witness Slanker, as detailed by him in his testimony, did not amount to consent in law, and affords no reason why the act of appellant in taking the money (if he did take it in the manner as sworn to by Slanker) was not larceny. *If there had been a preconcert of action between Slanker and appellant, a different question would have been presented."* (Italics ours.)

People v. *Hanselman,* 76 Cal., 460.

"Some courts have gone a great way in giving encouragement to detectives in some very questionable methods adopted by them to discover the guilt of criminals, but they have not yet gone so far,

and I trust never will, as to lend aid or encouragement to officers who may, under a mistaken sense of duty, encourage and assist parties to commit crime, in order that they may arrest and have them punished for so doing. The mere fact that the person contemplating the commission of a crime is supposed to be an old offender can be no excuse, much less a justification, for the course adopted and pursued in this case. . . . The encouragement of criminals to induce them to commit crimes, in order to get up a prosecution against them, is scandalous and reprehensible.

"When, in their zeal, or under a mistaken sense of duty, detectives suggest the commission of a crime, and instigate others to take part in its commission in order to arrest them while in the act, although the purpose may be to capture old offenders, their conduct is not only reprehensible, but criminal and ought to be rebuked, rather than encouraged, by the courts."

Connor v. *People,* 18 Colo., 373, 25 L. R. A., at page 348.

"Strong men are sometimes unprepared to cope with temptation and resist encouragement to evil when financially embarrassed and impoverished. A contemplated crime may never be developed into a consummated act. To stimulate unlawful intentions for the purpose and with the motive of bringing them to maturity, so the consequent crime may be punished, is a dangerous practice. It is safer law and sounder morals to hold that where one arranges to have a crime committed against his property or himself, and knows that an attempt is to be made to encourage others to commit the

act, by one acting in concert with such owner, that no crime is thus committed."

Love v. *People,* 160 Ill., 501, 32 L. R. A., at page 141.

"Mere deception by the detective will not shield the defendant, if the offense be committed by him free from the influence or instigation of the detective. The detective must not prompt or urge or lead in the commission of the offense."

State v. *Currie,* 13 N. D., 655, 69 L. R. A., at page 408.

"It (the County Court) simply held that the town could not recover a penalty for a violation of its ordinance, instigated and procured by its officer. It is entirely clear that the liquor, if it was purchased at all, was not purchased for the private use of any person. It was purchased to involve the seller in a violation of the ordinance, in order that the town attorney might be enabled to pursue him for a penalty. It was peculiarly the duty of Mr. Fairlamb (the town attorney), in view of the office which he filled, to uphold the ordinances of the town, and to discountenance their violation. But in this case we find him actively engaged in procuring the violation of an ordinance, even expending his own money for the purpose. So far as we can see, his only motive was to compel the victim to pay his money into the town treasury. It would be contrary to good morals to allow the plan to succeed. Public policy will not permit a municipality to derive profit from unlawful acts which are deliberately instigated and contrived by its officers. . . . To sustain this prosecution would be in effect to say that such officers have a license to inveigle citizens

into the commission of offenses, to the end that money may be extorted from them."

People v. *Braisted,* 13 Colo. App., 532, 58 Pacific Rep., 796.

"It appears that the city was instrumental in procuring the sale of the liquor. Its purpose was to lay the foundation for a suit. . . . The city is in no position to say that its ordinance was violated. It was as much responsible for the sale of the liquor as the defendant, and it will not be permitted to replenish its treasury from penalties incurred at its instigation. It cannot be heard to complain of an act the doing of which it solicited."

Wilcox v. *People,* 17 Colo. App., 109, 67 Pac. Rep., 343.

"The liability of men to fall into crime by consulting their interests and passions is unfortunately great, without the stimulus of encouragement. No State, therefore, can safely adopt a policy by which crime is to be artificially propagated. This principle it is which leads to the limitations of the doctrine as laid down by Wharton . . . namely, that the defendant who is trapped must himself have previously intended the offense into which he is trapped, and, also, that the offense intended is one to be committed by himself, either alone or with others. In the case before us, the design of the offense appears to have originated with Omensetter, and to have been by him transferred into the defendant's mind. . . . This is virtually the case of a detective, who, by promising to perpetrate a crime, lures an innocent man into aiding and abetting it, the object being, not the perpetration of the crime, but the luring of the abettor. Such a

proceeding is not a reality, but merely a tragical farce, in which the detective, masquerading as a criminal, captivates the unsophisticated defendant, and then, with mock heroics, denounces him."

Commonwealth v. *Bickings,* 12 Pa. Dist. Ct., 206.

"The writer has had occasion to criticize the character and manner of inducing men to commit crime as is evidenced by this record. This witness testifies, and is not controverted or contradicted, that the sheriff agreed to give him $10.00 for each case he would 'turn in' and additional money or compensation if a conviction should occur. The officers are not justified in inducing men to commit crime or in employing others to induce them to commit crime in order that prosecutions may be instituted. It is his duty as an officer, where he understands that parties are engaged in crime, to use every effort legitimate and permissible by law to detect and ferret out crimes and bring criminals to trial and justice. But this does not justify him in employing parties to go out and induce the citizen to commit crime that prosecutions may be instituted and carried on. We here call the attention of the legislature to such matter and would suggest that appropriate legislation be enacted to prevent matters of this sort occurring. This matter was thoroughly gone over by Judge Hurt in *Dever* v. *State,* 37 Tex. Cr. R., 397, 30 S. W., 1071. See also the case of *Bush* v. *State,* 151 S. W., 554, decided at the present term of this court." Judgment reversed.

Scott v. *State,* 153 S. W., 871 (Tex., Jan. 29, 1913).

"There is another line of cases which holds that where the parties originate the crime or is instrumental in its initiation and brings it about, he then becomes a *particep criminis,* and when testifying as a witness in the case is an accomplice. The leading cases in this State are *Dever* v. *State,* 37 Tex. Cr. R., 396, 30 S. W., 1071; *Steele* v. *State,* 19 Tex. App., 425. The opinion was by Judge Hurt and draws the distinction above mentioned between parties who were playing the role of detective for the arrest and punishment of parties, and those who originate the crime or assist in originating it in the first instance."

Bush v. *State,* 151 S. W., 556 (Texas).

"Where an officer, understanding that a crime is to be consummated, or is in course of being brought about and carried out, and he falls in line as a detective, he would not be a principal or an accessory, or a guilty participant, because the crime had already been put into operation in part or in whole; but where he is in the inception of the crime, and helps to bring that crime about, and assists in it in order that he may arrest, as he says, the parties, he is a guilty participant, and his official character is no protection against the act. That rule is thoroughly well settled. No officer has a right to violate the law on the theory that he claims he is doing it for ultimate good. An officer is to suppress crime, and not organize crime in order that he may punish somebody."

Hearne v. *State,* 165 S. W. (Texas), 603—from dissenting opinion.

"The offer of a bribe upon the suggestion of an officer that he will accept it is not punishable."

O'Brien v. *State,* 6 Tex. App., 665.

"But our duty to public justice and decency requires us to dispose of the other views of the case. In some of its features it is one of the most disgraceful instances of criminal contrivance to induce a man to commit a crime in order to get him convicted that has ever been before us. If the prisoner's statement is believed, and the Court in the latter part of the charge seems to have assumed it was probable, he was not the active agent in the crime, but guilty of aiding and abetting Flint and therefore only guilty if Flint was guilty.

"But it would be a disgrace to the law if a person who has taken active measures to persuade another to enter his premises, and take his property, can treat the taking as a crime, or qualify any of the acts done by invitation as criminal. What is authorized to be done is no wrong in law to the instigator. . . . If the transaction which is the basis of the prosecution was actually designed, as it was actually expected by the persons in the store, they deserve something more than censure for such a scheme."

People v. *McCord,* 76 Mich., 200, 42 N. W., at page 1108.

As will appear from the authorities cited above, the line of cleavage between those decisions justifying the employment of detectives to secure evidence against suspected criminals or to send decoy letters to ascertain whether crime has been or is about to be perpe-

trated, and those which look upon the creating of criminals by officials as being abhorrent to the law is a very marked one. In the instant case the record discloses without contradiction that the Government officers acted with a view to "getting a hold" on Woo Wai in order to procure information from him as to crimes suspected to have been committed in San Francisco (but not by him), and to this end and for this purpose the scheme or trap was laid to procure Woo Wai to commit a crime in order to get such a hold upon him. And these sworn officers of a great Government have plainly disclosed their contemptuous indifference or rather their eager desire to create a criminal of a man never before charged with the violation of any law, not even a municipal ordinance of an American city in which he had lived for more than thirty years.

Respectfully submitted.

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